IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.348 OF 2000

Mohan Gopal Naidu
Convict Prisoner No.C-11285
Yervada Central Prison,
Pune -411006 .. Appellant
(Orig. Accused No.1)

V/s.

The State of Maharashtra. ..Respondent.

Miss. D.M.Shah, Advocate appointed for the appellant.

Mrs. U.V. Kejriwal A.P.P. for the State.

CORAM : V.G.PALSHIKAR &
ANOOP V.MOHTA, JJ.

DATE : 24TH SEPTEMBER, 2004.

ORAL JUDGMENT (**PER ANOOP V. MOHTA, J.**)

. The appellant-accused No.1, along with accused No.2 Krishna Panna Swammi Harijan @ Naidu and accused No.3 Kanna @ Kanna Duraiswami Kavandar tried for the offence of committing the murder of Ashish @ Ramashish Bhalla (hereinafter referred deceased) and therefore, convicted under section 302,r/w section 34 of Indian Penal Code, by the Sessions Judge of Greater Bombay, in Sessions Case No.550 of 1997.

2. The appellant-accused No.1 has been convicted under section 302 of I.P.C. and sentenced to suffer

imprisonment for life with fine of Rs. 1000/- and in default of payment of fine he shall further undergo imprisonment for six months. The Original accused Nos. 2 and 3 have been convicted under section 304 part (2) of I.P.C. and sentenced to suffer rigorous imprisonment for 5 years with fine of Rs.500/- each, in default of payment of fine they shall further suffer rigorous imprisonment for 3 months each. This appeal has been filed by appellant-accused No.1 only.

2. The finding given by the learned Sessions Judge, based on the prosecution case reflect the following facts;

. On 15/2/1997 at about 3.45 p.m., P.W. 1, Pappukumar Gupta and deceased Ashish @ Ramashish were arranging their vegetables and fruits in their respective handcarts. They saw the appellant-accused No.1 Mohan Naidu and accused No.3 Kannan were quarrelling with rickshawala. Deceased Ashish @ Ramashish stopped them and asked them to go away. They left the place. The place was footpath, near variety stores, Jawahar Nagar, Road No.1, Goregaon (West), Mumbai. At about 4 p.m. appellant-accused No.1, with

knife,and accused No.2 Krishna with iron rod and accused No.3 Kanna with wooden Bamboo, came running towards the deceased. The appellant-accused No.1 stabbed Ramashish with knife on his chest. Ramashish ran in a lane and was shouting. The appellant-accused No.1 and accused Nos.2 and 3 chased Ramesh. He reached in injured condition at the place of one Bablu Studiowalla and collapsed. Crowd gathered after hearing commotion. They caught appellant-accused No.1 Mohan,accused No.2 Krishna, The other two persons fled away. P.W.12, Omprakash, informed to the police and to the P.W. 2, Netaji Thabe. Then police rushed to the spot with P.W. 12. They took custody of accused No.1 and 2 and brought them to the police station. P.W. 1 Pappukumar and brother of accused Mohan Bhalla removed Ramsish from the room and took to Cooper Hospital in autorickshaw.They also informed about the incident to the Goregoan Police station. A.P.I. Kenjare, P.W. 15, P.S.I. Shinde, P.W. 14 ruished to the hospital. F.I.R. of P.W.1 Pappukumar was recorded by P.W. 14, Dilip Shinde. Doctor came out from the intensive care and informed about the death of Ramashish. The dead body of the deceased was sent for autopsy. P.W.9, Dr. S.V. Kachare, carried out post-mortem (Exh.22) and has

noticed ante mortem injuries, and deep penetrating wound on the right side hypochondrium (the upper abdominal region near chest-ribs). It was 4 c.m. away from ziphisternum, corresponding to internal injury was also noted. On internal examination, he also noticed ruptured liver. The cause of death as declared was due to shock and haemorrhage caused by stab injury and it was opined that death was unnatural. The clothes of the deceased were seized under panchanama by P.W.14, Dilip shinde vide Exh.20. The scene of offence panchanmaa was drawn. Blood samples were also collected.The blood stained clothes of the two accused persons were also seized under panchanama Exh.16. The police has recorded the statements of three persons i.e. Mohan, Omprakash and his brother Jayprakash.

3 On 16/2/1997 P.W. 15, A.P.I. Subhash Kenjale arrested accused No.3 Kanan recorded the same in the station diary and his clothes were also taken charge of Exh.26. He has also recorded statement of P.S.I. Netaji Thabe and Smt. Archana Raju.

4. On 17/2/1997, in furtherance of appellant-accused No.1’s voluntary statement, blood

stained knife was recovered near Hanuman Temple, it was wrapped in the paper. Panchanma Exh.18 was drawn accordingly.

5. On 6/3/1997, the accused NO.2 Kirshana volunteered to make the statement and the same was recorded and based on the statement recorded, iron rod and bamboo stick ((article No.1) collectively were recovered under panchanama Exh.13. These articles and clothes of the deceased and the accused were sent for chemical analysis. The same was received on 23/6/1997 (Exh.43). The charges were framed against appellant and other two accused on 31.1.2000. All the accused denied the charges and claimed to be tried.

6. The prosecution has examined 15 witnesses. No defence witness was examined.

7. The learned Sessions Judge, held that the deceased Ashish @ Ramashish Bhalla died of homicidal death. He further held that the appellant-accused No.1 Mohan, accused No.2 Krishna and accused No.3 Kannan, with common intention, and conspiracy assaulted deceased Ashish @ Ramashish on 15/2/1997 at about 4.45 p.m. It

is held that the appellant-accused No.1 knowingly, and intentionally stabbed Ashish by knife and accused No.2 and 3 assaulted deceased with iron rod and wooden stick and this resulted into the death of deceased Ramashish. Therefore, convicted and punished as recorded above.

8. The learned advocate Miss Shah, appearing for the appellant and Mrs. Kejriwal, A.P.P appearing for the State have taken us through record and appeal memo. We have also perused the record and noted respective submissions of the parties.

9. There is no much argument could be made by the appellant so far as homicidal death of the deceased Ramashish. The post mortem report, medical report, corroborated by the medical evidence and other witnesses, as rightly noted and observed by the Sessions Judge and proved the homicidal death.

10. As noted above, the appellant has been convicted under Section 302 of Indian Penal Code, whereas the accused No.2 and 3 have been convicted under section 304 part (2) of Indian Penal Code. The appellant Counsel, therefore basically submitted that if there was common

intention, the deceased was attacked by all three accused jointly with intention to kill him, in that case, the conviction under Section 302 of I.P.C. only to appellant No.1 is not sustainable, specially when on the same evidence and material collected the testimony of so called eye witnesses, accused No.2 and 3 were convicted under section 304 part (2) of I.P.C. Therefore, the submissions was made that the conviction and punishment as awarded under section 302 of I.P.C. be reduced to 304 part (2) of I.P.C. in the line of accused No.2 and 3. As there was no much substance in this appeal in so far as order of conviction against all these accused and as after going through the record we also found that in view of the point wise reasoning given by the learned Sessions Judge and as there was homicidal death, caused by these accused, all these accused are entitled for the same punishment.

11. The medical evidence of P.W. 9, Dr. Kachare based on the post mortem notes Exh.22 has clearly opined that the injuries could be possible by knife and cause of death was due to shock and haemorrhage by stab injury (verify), noted ruptured liver on internal examination by P.W.9 cannot be overlooked (verify). P.W. 1

Pappukumar nowhere able to depose the role of each of the accused while assaulting the deceased and unable to remember the name of the persons who stabbed deceased Ramashish.

12. The Apex Court in A.I.R. 1992 S.C. 881, Pradumansingh V/s. State of Gujrat. has declaredthat in case where there is a direct evidence, the seizure of the weapon is not very material. Therefore, in the present case as testimony of P.W. 1, Papukumar and Omprakash support prosecution case read with the material evidence, we have no doubt that the offence has been committed by the appellant along with other accused. The Apex Court in A.I.R.1985 S.C. 866, Srishali Nagesh Pare, Vs. State of Maharashtra, held that the eye witnesses their testimony if is accepted the order of conviction can be passed based on the other confirming circumstances.

13. P.W. 12 Omprakash, another eye witness also unable to identify the role played by all the accused. There is no mention of assault by iron rod and wooden stick. The other material witnesses support the prosecution case so far as proved by all the

panchanamamas, spot inspection, medical report, C.A. reprot, apart from police witnesses. The blood group found on the article recovered at the instance of the accused also matches with the blood group of the deceased i.e. "B" blood group as per C.A. report Exh.42. However, recovery of knife at the instance of appellant is concerned, the said panch witness was declared hostile. The said recovery of knife was also, from public place. Therefore, the recovery of the article knife is in doubt. There are some lacunas. The statements were not voluntary and production of the weapon was also from public place and same was also not recovered at the instance of accused No.1.

14. As the recovery of the alleged knife (article) was mot duly approved as it was also one of the weapons along with the iron rod and bamboo stick, role of the appeallant-accused No.1 for offence under Section 302 of I.P.C. raises doubt. The learned Judge awarded the conviction to accused No.2 and 3 under Section 304 part (2), we are of the view that the conviction of appellant under section 302 is also liable to be reduced to section 304 part (2) of I.P.C. Accordingly the appellant’s sentence is reduced to 8 years instead of

life imprisonment. The appellant if has already under gone this punishment, he be released forthwith, if not required in any other offence.

15. As noted above, there are mitigating circumstances in the present appeal so far as appellant-accused No.1 is concerned. Therefore, the conviction is modified as referred above, and the appellant is convicted under section 304 part (2) of I.P.C. and sentence is reduce to 8 years.

16. In view of above reasons, the appeal is partly alowed. The appellant-accused No.1 be released after completion of 8 years of punishment, if not required for any other offence.

17. We quantify the fees to be paid to the advocate appointed for the appellant at Rs. 750/- for this appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]